



Senate

General Assembly

File No. 470

February Session, 2018

Substitute Senate Bill No. 404

Senate, April 12, 2018

The Committee on Public Health reported through SEN. GERRATANA of the 6th Dist. and SEN. SOMERS of the 18th Dist., Chairpersons of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MANDATED REPORTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 17a-101 of the 2018 supplement
2 to the general statutes is repealed and the following is substituted in
3 lieu thereof (*Effective July 1, 2018*):

4 (b) The following persons shall be mandated reporters: (1) Any
5 physician or surgeon licensed under the provisions of chapter 370, (2)
6 any resident physician or intern in any hospital in this state, whether
7 or not so licensed, (3) any registered nurse, (4) any licensed practical
8 nurse, (5) any medical examiner, (6) any dentist, (7) any dental
9 hygienist, (8) any psychologist, (9) any school employee, as defined in
10 section 53a-65, (10) any social worker, (11) any person who holds or is
11 issued a coaching permit by the State Board of Education, is a coach of
12 intramural or interscholastic athletics and is eighteen years of age or
13 older, (12) any individual who is employed as a coach or director of
14 youth athletics and is eighteen years of age or older, (13) any

15 individual who is employed as a coach or director of a private youth
16 sports organization, league or team and is eighteen years of age or
17 older, (14) any paid administrator, faculty, staff, athletic director,
18 athletic coach or athletic trainer employed by a public or private
19 institution of higher education who is eighteen years of age or older,
20 excluding student employees, (15) any police officer, (16) any juvenile
21 or adult probation officer, (17) any juvenile or adult parole officer, (18)
22 any member of the clergy, (19) any pharmacist, (20) any physical
23 therapist, (21) any optometrist, (22) any chiropractor, (23) any
24 podiatrist, (24) any mental health professional, (25) any physician
25 assistant, (26) any person who is a licensed or certified emergency
26 medical services provider, (27) any person who is a licensed or
27 certified alcohol and drug counselor, (28) any person who is a licensed
28 marital and family therapist, (29) any person who is a sexual assault
29 counselor or a domestic violence counselor, as defined in section 52-
30 146k, (30) any person who is a licensed professional counselor, (31) any
31 person who is a licensed foster parent, (32) any person paid to care for
32 a child in any public or private facility, child care center, group child
33 care home or family child care home licensed by the state, (33) any
34 employee of the Department of Children and Families, (34) any
35 employee of the Department of Public Health, (35) any employee of the
36 Office of Early Childhood who is responsible for the licensing of child
37 care centers, group child care homes, family child care homes or youth
38 camps, (36) any paid youth camp director or assistant director, (37) the
39 Child Advocate and any employee of the Office of the Child Advocate,
40 [and] (38) any family relations counselor, family relations counselor
41 trainee or family services supervisor employed by the Judicial
42 Department, and (39) any person who is a licensed behavior analyst or
43 board certified assistant behavior analyst.

44 Sec. 2. (NEW) (*Effective October 1, 2018*) (a) As used in this section
45 and section 3 of this act:

46 (1) "Abuse" means the wilful infliction of physical pain, injury or
47 mental anguish, or the wilful deprivation by a caregiver of services
48 which are necessary to maintain the physical and mental health of a

49 patient;

50 (2) "Behavioral health facility" means any facility operated by the
51 Department of Mental Health and Addiction Services that provides
52 mental health or substance use disorder services to persons eighteen
53 years of age or older;

54 (3) "Patient" means any person receiving services from a behavioral
55 health facility;

56 (4) "Legal representative" means a court-appointed fiduciary,
57 including a guardian or conservator, or a person with power of
58 attorney authorized to act on a patient's behalf; and

59 (5) "Mandatory reporter" means (A) any person in a behavioral
60 health facility paid to provide direct care for a patient of such facility,
61 and (B) any employee, contractor or consultant of such facility who is a
62 licensed healthcare provider.

63 (b) Any mandatory reporter, who, in the ordinary course of such
64 person's employment, has reasonable cause to suspect or believe that
65 any patient (1) has been abused, (2) is in a condition that is the result of
66 abuse, or (3) has had an injury that is at variance with the history given
67 of such injury, shall, not later than seventy-two hours after such
68 suspicion or belief arose, report such information or cause a report to
69 be made in any reasonable manner to the Commissioner of Mental
70 Health and Addiction Services or to the person or persons designated
71 by the commissioner to receive such reports. Any behavioral health
72 facility providing direct care for patients shall provide mandatory
73 training on detecting potential abuse of patients to mandatory
74 reporters and inform such individuals of their obligations under this
75 section.

76 (c) Any mandatory reporter who fails to make a report under
77 subsection (b) of this section or fails to make such report within the
78 prescribed time period set forth in said subsection shall be fined not
79 more than five hundred dollars, except if such person intentionally

80 fails to make such report within the prescribed time period, such
81 person shall be guilty of (1) a class C misdemeanor for the first
82 violation, and (2) a class A misdemeanor for any subsequent violation.

83 (d) A report made under subsection (b) of this section shall contain
84 the name and address of the behavioral health facility, the name of the
85 patient, information regarding the nature and extent of the abuse and
86 any other information the mandatory reporter believes may be helpful
87 in an investigation of the case and for the protection of the patient.

88 (e) Any other person having reasonable cause to believe that a
89 patient is being or has been abused shall report such information in
90 accordance with subsection (b) of this section in any reasonable
91 manner to the Commissioner of Mental Health and Addiction Services,
92 or to the person or persons designated by the commissioner to receive
93 such reports, who shall inform the patient or such patient's legal
94 representative of the services of the nonprofit entity designated by the
95 Governor in accordance with section 46a-10b of the general statutes to
96 serve as the Connecticut protection and advocacy system.

97 (f) A report filed under this section shall not be deemed a public
98 record, and shall not be subject to the provisions of section 1-210 of the
99 general statutes. Information derived from such report for which
100 reasonable grounds are determined to exist after investigation,
101 including the identity of the behavioral health facility, the number of
102 complaints received, the number of complaints substantiated and the
103 types of complaints, may be disclosed by the Commissioner of Mental
104 Health and Addiction Services, except in no case shall the name of the
105 patient be revealed, unless such person specifically requests such
106 disclosure or unless a judicial proceeding results from such report.
107 Notwithstanding the provisions of this section, not later than twenty-
108 four hours or as soon as possible after receiving a report under this
109 section, the commissioner or the commissioner's designee shall notify
110 such person's legal representative, if any. Such notification shall not be
111 required when the legal representative is suspected of perpetrating the
112 abuse that is the subject of the report. The commissioner shall obtain

113 the contact information for such legal representative from the
114 behavioral health facility.

115 (g) (1) Subject to subdivision (2) of this subsection, any person who
116 makes a report under this section or who testifies in any administrative
117 or judicial proceeding arising from the report shall be immune from
118 any civil or criminal liability with regard to such report or testimony,
119 except liability for perjury in the context of making such report.

120 (2) Any person who makes a report under this section is guilty of
121 making a fraudulent or malicious report or providing false testimony
122 when such person (A) wilfully makes a fraudulent or malicious report,
123 (B) conspires with another person to make or cause to be made such
124 fraudulent or malicious report, or (C) wilfully testifies falsely in any
125 administrative or judicial proceeding arising from such report
126 regarding the abuse of a patient. Making a fraudulent or malicious
127 report or providing false testimony under this section is a class A
128 misdemeanor.

129 (h) Any person who is discharged or in any manner discriminated
130 or retaliated against for making, in good faith, a report under this
131 section shall be entitled to all remedies available under law.

132 Sec. 3. (NEW) (*Effective October 1, 2018*) (a) The Commissioner of
133 Mental Health and Addiction Services, upon receiving a report under
134 section 2 of this act that a patient is being or has been abused, shall
135 investigate the report to determine the condition of the patient and
136 what action and services, if any, are required. The investigation shall
137 include (1) an in-person visit to the named patient, (2) consultation
138 with those individuals having knowledge of the facts surrounding the
139 particular report, and (3) an interview with the patient, unless the
140 patient refuses to consent to such interview. Upon completion of the
141 investigation, the commissioner shall prepare written findings that
142 shall include recommended actions. Not later than forty-five days after
143 completion of the investigation, the commissioner shall disclose, in
144 general terms, the result of the investigation to the person or persons
145 who reported the suspected abuse, provided: (A) The person who

146 made such report is legally mandated to make such report, (B) the
147 information is not otherwise privileged or confidential under state or
148 federal law, (C) the names of the witnesses or other persons
149 interviewed are kept confidential, and (D) the names of the person or
150 persons suspected to be responsible for the abuse are not disclosed
151 unless such person or persons have been arrested as a result of the
152 investigation.

153 (b) The Department of Mental Health and Addiction Services shall
154 maintain a state-wide registry of the number of reports received under
155 this section, the allegations contained in such reports and the outcomes
156 of the investigations resulting from such reports.

157 (c) The patient's file, including, but not limited to, the original report
158 and the investigation report shall not be deemed a public record or
159 subject to the provisions of section 1-210 of the general statutes. The
160 commissioner may disclose such file, in whole or in part, to an
161 individual, agency, corporation or organization only with the written
162 authorization of the patient, the patient's legal representative or as
163 otherwise authorized under this section.

164 (d) Notwithstanding the provisions of subsection (c) of this section,
165 the commissioner shall not disclose the name of a person who reported
166 suspected abuse, except with such person's written permission or to a
167 law enforcement official pursuant to a court order that specifically
168 requires such disclosure.

169 (e) The patient or such patient's legal representative or attorney
170 shall have the right of access to records made, maintained or kept on
171 file by the department, in accordance with all applicable state and
172 federal law, when such records pertain to or contain information or
173 material concerning the patient, including, but not limited to, records
174 concerning investigations, reports or medical, psychological or
175 psychiatric examinations of the patient, except: (1) If protected health
176 information was obtained by the department from someone other than
177 a health care provider under the promise of confidentiality and the
178 access requested would, with reasonable likelihood, reveal the source

179 of the information; (2) information identifying the individual who
 180 reported the abuse of the person shall not be released unless, upon
 181 application made to the Superior Court by the patient or such patient's
 182 legal representative or attorney and served on the Commissioner of
 183 Mental Health and Addiction Services, a judge determines, after in
 184 camera inspection of relevant records and a hearing, that there is
 185 reasonable cause to believe the individual knowingly made a false
 186 report or that other interests of justice require such release; (3) if it is
 187 determined by a licensed health care provider that the access requested
 188 is reasonably likely to endanger the life or physical safety of the patient
 189 or another person; (4) if the protected health information makes
 190 reference to another person, other than a health care provider, and the
 191 access requested would reveal protected health information about such
 192 other person; or (5) the request for access is made by the patient's legal
 193 representative, and a licensed health care provider has determined, in
 194 the exercise of professional judgment, that the provision of access to
 195 such legal representative is reasonably likely to cause harm to the
 196 patient or another person.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2018</i>	17a-101(b)
Sec. 2	<i>October 1, 2018</i>	New section
Sec. 3	<i>October 1, 2018</i>	New section

Statement of Legislative Commissioners:

In Section 2(e), the phrase ", or to the person or persons designated by the commissioner to receive such reports," was added for consistency with Section 2(b); and in Section 3(e)(2), the phrase ", neglect or exploitation" was deleted for consistency with the other provisions in Sections 2 and 3.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 19 \$	FY 20 \$
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill creates a new category of mandated reporter for abuse of patients at certain facilities operated by the Department of Mental Health and Addiction Services (DMHAS). To the extent that a mandated reporter fails to comply with reporting requirements or intentionally fails to report abuse, this could result in a revenue gain from any fines that are imposed.

The bill, which also requires that behavior analysts become mandated reporters of suspected child abuse and neglect, does not result in a fiscal impact to the state or municipalities. It is anticipated that processing potential additional reports from behavior analysts can be accommodated within the normally budgeted resources of the Department of Children and Families' Careline.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to any fines imposed and collected for noncompliance with mandated reporter requirements.

OLR Bill Analysis**sSB 404*****AN ACT CONCERNING MANDATED REPORTERS.*****SUMMARY**

This bill creates a new category of mandated reporter for abuse of patients at Department of Mental Health and Addiction Services (DMHAS)-operated facilities that provide mental health or substance use disorder services to adults (i.e., “behavioral health facilities”). Under the bill, a mandatory reporter for this purpose is (1) anyone paid to provide direct care to patients at such a facility or (2) any licensed health care provider who is an employee, contractor, or consultant of such a facility.

The bill sets procedural requirements for the mandatory reporting and penalties for noncompliance. Among other things, the bill:

1. requires reporting suspected abuse to DMHAS within 72 hours;
2. sets fines for failing to report as required, and misdemeanor criminal penalties for intentionally failing to do so;
3. requires behavioral health facilities to train mandated reporters on detecting potential patient abuse;
4. exempts reports of such abuse from disclosure under the Freedom of Information Act; and
5. requires the DMHAS commissioner to investigate these reports of abuse.

Additionally, the bill adds licensed behavior analysts and board-certified assistant behavior analysts to the list of mandated reporters of child abuse. By law, if a mandated reporter acting in a professional

capacity reasonably suspects or believes that a child has been abused, neglected, or placed in imminent risk of serious harm, he or she must report (1) orally to the Department of Children and Families (DCF) or a law enforcement agency within 12 hours and (2) in writing to DCF within 48 hours after making an oral report. Failure to report as required subjects the mandated reporter to criminal penalties (see BACKGROUND)(CGS §17a-101 et seq.).

EFFECTIVE DATE: October 1, 2018, except the provision adding behavioral analysts to the list of mandated reporters of child abuse or neglect takes effect July 1, 2018.

§ 2 — MANDATORY REPORTING OF SUSPECTED PATIENT ABUSE

The bill requires a person to report suspected abuse of a patient receiving services from a DMHAS-operated behavioral health facility if the person is a mandated reporter who, in the ordinary course of his or her employment, reasonably suspects a patient has:

1. been abused or is in a condition resulting from abuse or
2. had an injury that is at variance with the history given of the injury.

Under the bill, “abuse” means (1) the willful infliction of physical pain, injury, or mental anguish, or (2) a caregiver’s willful deprivation of services necessary to maintain a patient’s physical and mental health.

The report must be made to the DMHAS commissioner, or her designee, within 72 hours after the suspicion or belief arose. Under the bill, a mandatory reporter is a behavioral health facility (1) employee paid to provide direct patient care or (2) employee, contractor, or consultant who is a licensed health care provider.

The bill requires behavioral health facilities providing direct patient care to (1) provide mandatory training to mandated reporters on detecting potential patient abuse and (2) inform them of their

obligations to report abuse.

Additionally, the bill requires any other person with reasonable cause to suspect such patient abuse to report it to DMHAS in the same manner as the mandated reporters. The DMHAS commissioner, or her designee, must then inform the patient or the patient's legal representative of the services provided by Disability Rights Connecticut, Inc., the state's protection and advocacy system.

Report Contents

The bill requires a patient abuse report to include (1) the facility's name and address, (2) the patient's name, (3) information on the nature and extent of the abuse, and (4) any other information the mandatory reporter believes may help the investigation of the case or the patient's protection.

Report Confidentiality

Under the bill, a patient abuse report filed with DMHAS is not disclosable under the Freedom of Information Act. The DMHAS commissioner may disclose information derived from the report for which reasonable grounds are determined to exist after investigation, including the (1) facility's identity, (2) number of complaints received, and (3) number and types of substantiated complaints. But the bill prohibits her from disclosing a patient's name, unless the patient requests it or a judicial proceeding results from the report.

The bill requires the commissioner, or her designee, to notify the patient's legal representative, if any, within 24 hours, or as soon as possible, after receiving a report of suspected abuse. The commissioner must obtain the legal representative's contact information from the facility.

Under the bill, notification is not required if the legal representative is suspected of causing the abuse that is the subject of the report.

Immunity from Liability

Under the bill, a person who reports suspected patient abuse to

DMHAS or who testifies in any related administrative or judicial proceeding is generally immune from civil or criminal liability. The bill exempts from this protection perjury related to making the report, giving false testimony, or making fraudulent or malicious reports (see below).

Penalties

A mandated reporter who fails to report the abuse to DMHAS within the 72-hour deadline can be fined up to \$500. If the failure was intentional, the reporter can be charged with a class C misdemeanor (up to three months imprisonment, a fine of up to \$500, or both) for the first offense and a class A misdemeanor (up to one year imprisonment, a fine of up to \$2,000, or both) for any subsequent offense.

Additionally, a person is guilty of (1) making a fraudulent or malicious patient abuse report or (2) providing false testimony related to such a report, if he or she:

1. willfully makes a fraudulent or malicious report,
2. conspires with another person to make a fraudulent or malicious report or cause such a report to be made, or
3. willfully provides false testimony in any administrative or judicial proceeding related to the patient abuse report.

These violators are guilty of a class A misdemeanor and subject to up to one year imprisonment, a fine of up to \$2,000, or both.

Whistleblower Protection

Under the bill, a person who is discharged, or who is discriminated or retaliated against for making a patient abuse report in good faith is entitled to all remedies available by law.

§ 3 — PATIENT ABUSE INVESTIGATIONS

The bill requires the DMHAS commissioner to investigate reports she receives of suspected abuse of behavioral health facility patients to determine the patient's condition and if any actions or services are

required. The investigation must include:

1. an in-person visit with the patient;
2. consultation with individuals having knowledge of the facts surrounding the report; and
3. a patient interview, unless the patient refuses to participate.

After completing the investigation, the bill requires the commissioner to prepare written findings and recommended actions.

Investigation Results

The bill requires the commissioner, within 45 days after completing an investigation, to disclose its results in general terms to the person who reported the suspected abuse if the:

1. person who made the report is a mandated reporter (see § 53);
2. information is not otherwise privileged or confidential under state or federal law;
3. names of the witnesses or other people interviewed are kept confidential; and
4. names of the people suspected to be responsible for the abuse are not disclosed, unless they were arrested as a result of the investigation.

Disclosure of Records

Under the bill, DMHAS must maintain a statewide registry of the number of patient abuse reports it receives, the allegations in the reports, and the outcomes of the resulting investigations.

The patient's file, including the original abuse report and investigation report, is not disclosable under the Freedom of Information Act. The bill permits the DMHAS commissioner to disclose part or all of it to a person, agency, corporation, or organization if the patient or patient's legal representative consents to

its disclosure or the disclosure is authorized under the bill. But it prohibits the commissioner from disclosing the name of the person who reported the suspected abuse, unless he or she provides written permission or a court order requires the name to be disclosed to a law enforcement officer.

Access to Records

The bill generally permits the patient, or the patient's legal representative or attorney, to access DMHAS records that pertain to or contain information or material concerning the patient. Such records include those on investigations; reports; or the patient's medical, psychological, or psychiatric examinations, except:

1. if it includes protected health information from someone other than a health care provider under the promise of confidentiality and the requested access would, with reasonable likelihood, reveal the information's source;
2. information identifying the person who reported the abuse, neglect, or exploitation cannot be released unless the patient applies to the Superior Court, serves the DMHAS commissioner, and a judge determines, after a private records review and a hearing, that there is reasonable cause to believe the person knowingly made a false report or that other interests of justice require the release;
3. if a licensed health care provider determines that the access is reasonably likely to endanger the life or physical safety of the patient or another person;
4. if the protected health information references another person, other than a health care provider, and the requested access would reveal the other person's protected health information; or
5. the access is requested by the patient's legal representative and a licensed health care provider determines in his or her professional judgment, that the requested access is reasonably

likely to harm the patient or another person.

BACKGROUND

Related Bills

sSB 16, favorably reported by the Public Health Committee, also creates a new category of mandated reporters for abuse of patients at DMHAS-operated behavioral health facilities.

Penalties for Mandated Reporters of Child Abuse

A mandated reporter of child abuse who fails to report as required generally commits a class A misdemeanor, punishable by up to one year in prison, a fine of up to \$2,000, or both. In some circumstances (such as repeat violations), it is a class E felony, punishable by up to three years in prison, a fine of up to \$3,500, or both (CGS § 17a-101a).

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 26 Nay 0 (03/23/2018)